UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/1998/NGO/4
14 July 1998

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Fiftieth session
Item 3 of the provisional agenda

COMPREHENSIVE EXAMINATION OF THEMATIC ISSUES RELATING TO THE ELIMINATION OF RACIAL DISCRIMINATION

Written statement submitted by the Association for World Education, a non-governmental organization on the Roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[7 July 1998]

GE.98-13180 (E)

Direct and public incitement to commit genocide

1. The Association for World Education warmly welcomes the support given to the Convention on the Prevention and Punishment of the Crime of Genocide on its fiftieth anniversary, in particular Commission resolution 1996/10 in which the Commission reiterated the need for universal ratification and emphasized the importance of speedy prevention, and called upon all States to increase and intensify their activities aimed at the full implementation of the provisions of the Convention.

2. The Genocide Convention is a landmark in the efforts to develop a system of universally accepted standards which promote an equitable world order for all members of the human family to live in dignity. Three articles are at the heart of this Convention and are here quoted in full to understand the process of implementation proposed by us:

"Article II

"In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

"(a) Killing members of the group;

"(b) Causing serious bodily or mental harm to members of the group;

"(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

"(d) Imposing measures intended to prevent births within the group;

"(e) Forcibly transferring children of the group to another group.

"Article III

"The following acts shall be punishable:

"(a) Genocide;

"(b) Conspiracy to commit genocide;

"(c) Direct and public incitement to commit genocide;

"(d) Attempt to commit genocide;

"(e) Complicity in genocide."

"Article VIII

"Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in article III."

3. The Genocide Convention was adopted on 9 December 1948 by the United Nations General Assembly - the day before the proclamation of the Universal Declaration of Human Rights - and came into force in 1951. Although reports have reached the United Nations of actual or potential situations of genocide, no Contracting Party has called for action under article VIII of the Convention.

4. The need for speedy preventive measures has been repeatedly underlined by United Nations officials. As the former United Nations High Commissioner for Human Rights, Mr. José Ayala-Lasso, declared on 31 August 1995: "I agree that one of the fundamental methods to combat genocide is prevention of this crime. Prohibiting and punishing public incitement to commit genocide should be endorsed by the international community, pursuant to the Convention on the Prevention and Punishment of the Crime of Genocide."

5. Likewise, in a key address in 1997 at the Holocaust Memorial Museum in Washington, the United Nations High Commissioner for Refugees, Mrs. Sadaka Ogata, declared: "As we all know, genocide, characterized by the intent to destroy national, ethnic or religious groups is the most violent and pernicious form of human rights violations. Yet in the decades since the Holocaust, we have not been able to prevent or halt even the most brutal forms of violence against whole groups of people." Mrs. Ogata appealed to the international community to "be prepared to halt the worst evil at its source," adding: "We need a strong United Nations human rights machinery to prevent but also to expose violations of human rights. We also need an international criminal court" (Washington Post, article adapted from her speech and republished in the International Herald Tribune, 6 May 1997).

6. The lack of governmental action to prevent genocide in the past has led the Sub-Commission on Prevention of Discrimination and Protection of Minorities to request two reports prepared by its members, one by Mr. Nicodène Ruhashyankiko (E/CN.4/Sub.2/1978/416) and an updated report by Mr. Benjamin Whitaker (E/CN.4/Sub.2/1985/6 and Corr.1).

7. In his 1978 report, Mr. Ruhashyankiko proposed mechanisms for the study of information on genocide and genocidal practices. He wrote:

"A number of allegations of genocide have been made since the adoption of the 1948 Convention. In the absence of a prompt investigation of these allegations by an impartial body, it has not been possible to determine whether they were well-founded. Either they have given rise to sterile controversy or, because of the political circumstances, nothing further has been heard about them. For these reasons, the Special Rapporteur feels that the Commission on Human Rights should consider the setting up of ad hoc committees to inquire

into allegations of genocide brought to the knowledge of the Commission by a Member State or an international organization and supported by sufficient prima facie evidence" (para. 614).

8. Such an ad hoc body would also be particularly qualified to study examples of "direct and public incitement to commit genocide". The Genocide Convention, in its provisions concerning public incitement, sets the outer limits of political discourse. Groups, peoples, social classes or categories are not to be attacked and threatened. The Genocide Convention is a constant reminder of the need to moderate political discourse, especially constant and repeated accusations against a religious, ethnic, and social category of persons.

9. The right to freedom of expression - upheld by article 19 of the Universal Declaration of Human Rights and by article 19.2 of the International Covenant on Civil and Political Rights - can be limited only in closely defined circumstances. However, a certain form of "expression" ("hate speech"), which denies the human rights of whole groups of people, can lead to mass killing and genocide. Thus, there should be universally agreed-upon limits to forms of "expression" that are incitements to kill; these limits can be based on the principles set out in article 20.2 of the above-mentioned International Covenant: "Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law".

10. Such an ad hoc committee would constantly reinforce these outer limits of political discourse by investigation and public analysis of socio-political speeches, documents or founding charters of movements which blatantly spell out murderous - even genocidal - aspirations. While some non-governmental organizations have done useful work in monitoring hate and genocidal discourse in texts, in audio-visual media and on the Internet, public analysis must be carried out at the highest international level, which is the United Nations system.

11. In addition to the possibility of setting up an ad hoc committee specifically devoted to genocide and direct and public incitement to commit genocide, there is also the possibility of using the procedures of the Committee for the Elimination of Racial Discrimination.

12. The 1965 International Convention on the Elimination of All Forms of Racial Discrimination, under its article 4 condemns: "... all propaganda and all organizations which ... attempt to justify or promote racial hatred and discrimination in any form," obliging, in article 4 (a), States parties to declare as "an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons". It also affirms, under article 4 (b), that States parties "shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law".

13. This Convention has set up a body of independent experts - the Committee for the Elimination of Racial Discrimination (CERD) - to examine reports by State parties. Through its urgent procedures mechanisms, CERD also has the possibility of taking early warning measures aimed at preventing existing strife from escalating into conflicts, and to respond to problems requiring immediate attention.

14. On 21 March 1995, at a public United Nations round table, in response to a question, the then CERD Chairman, Mr. Ivan Garvalov, indicated the connection between the 1948 Genocide Convention and the 1965 International Convention for the Elimination of All Forms of Racial Discrimination: "There is indeed a mechanism for CERD to act immediately under article 4 of its Convention in regard to any mass media appeals and to any other incitement to racial discrimination and violence leading to genocide." Since then, this link between the two Conventions is under discussion and awaits its full implementation. The effectiveness of an implementary system depends on two things: the machinery set up for the task, and the will to make use of the machinery.

15. To mark the fiftieth anniversary of the Convention on the Prevention and Punishment of the Crime of Genocide, the Association for World Education calls upon the Sub-Commission, at its fiftieth session, to:

(a) Strongly condemn any direct and public incitement to commit genocide, as defined in article III (c) and article IV of the Convention on the Prevention and Punishment of the Crime of Genocide and in article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination;

(b) Recommend that - until the International Criminal Court has authority to act in such cases - States parties should automatically invoke article VIII of the Genocide Convention, whenever "direct or public incitement to commit genocide" is manifested by whomsoever;

(c) Address a resolution to the Commission on Human Rights to study ways in which an ad hoc committee on genocide can be established, as recommended in the 1978 Sub-Commission report by Mr. Ruhashyankiko;

(d) Recommend that the capacity of CERD's urgent procedures mechanisms be strengthened so that CERD may more fully investigate any direct and public incitement to commit genocide.

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/1998/NGO/5
20 July 1998

Original: ENGLISH, FRENCH
AND SPANISH

COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Fiftieth session
Item 4 (c) of the provsional agenda

THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS: THE QUESTION OF TRANSNATIONAL CORPORATIONS

Written statement submitted by the International League for the Rights and Liberation of Peoples, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[10 July 1998]

Adverse effects of the Chad-Cameroon oil and pipeline project on the enjoyment of human, economic, social, environmental and cultural rights of the local populations: the role of the oil consortium EXXON-Elf-Shell

1. Fossil fuel exploitation projects in developing countries, in particular oil extraction by transnational corporations (TNCs), have led to serious violations of human rights, corruption of officials and environmental destruction. The standard of living of local communities has not benefited from the use of natural resources; on the contrary, the rights of communities living in project areas have been constantly violated. The industrial policy of TNCs in Africa, in particular Shell and Elf, is in fact based on economic and financial gains ensuing from oil extraction linked to political and financial interests in the north. This is evident in the cases of Nigeria and the Congo.

2. The lack of national legislation and the inadequacy of international law provisions in regulating activities of oil-producing TNCs and in providing effective codes of conduct for their operations have resulted in a situation of widespread impunity. Huge export-oriented and capital-intensive investments by TNCs result in economic, social and cultural rights violations, undermine the rights of peoples to self-determination, sovereignty over their land and natural resources, and eventually threaten their health status.

3. In this context, the Chad-Cameroon oil and pipeline project developed by a consortium formed by EXXON and Shell (40 per cent participation each) and Elf Aquitaine (20 per cent), whose funding is currently being discussed by the World Bank, may have the same negative effects as those suffered by the Ogoni people in Nigeria. The project envisages the exploitation of 300 new oil wells in the Doba region (southern Chad) with a production of 225,000 barrels/day and the construction of a 1,100 km export pipeline through Cameroon. An offshore terminal will be built in Kribi to provide for storage and loading of oil. Total costs are estimated at US$ 3.5 billion.

4. World Bank funding would consist in a US$ 250 million loan by the International Finance Corporation (IFC) and an additional US$ 120 million to fund the participation of the Chad and Cameroon Governments to the project's joint ventures. Originally, these funds were to be provided by the International Development Association (IDA, which gives concessional loans to poorer countries) but more recently the Bank has apparently decided to use the International Bank for Reconstruction and Development (IBRD, which lends at market rates) instead. The participation of the World Bank, according to the consortium, is essential to attract an additional US$ 1.3 billion in funding from private investors and export credit agencies. The oil conscrtium would cover the remaining costs.

5. At the economic level, the project could cause the loss of competitiveness of local companies, threaten traditional economies and self-sufficiency and, in the long term, further exacerbate poverty and increase foreign debt. At the political level, it may reignite civil strife and conflicts that have already occurred in the area. Environmental threats relate to biodiversity loss, water and soil pollution, climate change and ecosystem degradation. The resettlement of project-affected populations

living in the oil extraction area and along the pipeline route will cause the loss of cultural identity, in particular for the local Bantu and Pygmy groups in Cameroon.

6. Because of the importance of the oil consortium's vested interests, there can be no guarantee for objective social and environmental assessments, nor for an effective monitoring of the implementation of the project. In fact, World Bank directives on environmental impact assessment (EIA) and public consultation have not been followed. A private company, rather than an independent team, was contracted by the consortium to carry out the EIA and the Environmental Management Plan (EMP), two documents that are essential to secure World Bank funding. Local communities have not been properly consulted in the project planning and preparation. No alternative has been considered and public dissemination of information has been insufficient.

7. The assessment of the project's impact on the environment carried out by the consortium, two years after the signing of the contract, and a few months before the planned decision of the World Bank, is vague and incomplete. The pipeline project forms the basis of further plans for oil-field development in Chad and neighbouring countries. At the least five other basins, of which the Doba basin forms only a small part, have been identified in Chad. This means that the long-term impacts of the project on people and environment will be far beyond those already assessed by the consortium. No plans are defined for compensation, resettlement, river and biodiversity protection, waste management, oil spills prevention, or for preservation of drinking water. No assessment has been made of a possible climate change and of the impact caused by the use of extracted oil. No alternative development option has been considered.

8. An evaluation of the project's impact on the social and cultural life of local populations has not been carried out either: local communities may lose access to those natural resources found in tropical rainforests upon which they depend for their, physical, social and cultural survival. The survival of indigenous groups, especially Bakola Pygmies in Cameroon, may be seriously undermined.

9. According to a consortium estimate, as many as 160 families will have to be forcibly resettled in Chad only; however, no adequate compensation and rehabilitation plan has been developed yet. One of the key Operational Directives of the World Bank on involuntary resettlement (O.D. 4.30) requires that the standard of living of resettled people be better, or at least at the same level, than that before being resettled. Compensation is limited to the loss of arable land and fruit orchards. No compensation is apparently planned for losses deriving from the logging of forests in Cameroon in order to lay the pipeline and for the loss of wild plants, nor for the loss of common grazing land and dwellings.

10. The project's justification is poverty alleviation in two African countries with one of the lowest GNPs in the world. Such purpose would be served, according to the World Bank and the consortium, by creating local companies and job opportunities, and fairly redistributing oil revenues by investing them in social development projects. The Chadian Government, by

means of the State company TOCTO, would receive US$ 5 billion in oil royalties, and the Cameroonian Government, through its company COTCO, would receive US$ 500 million in transit and transport revenues.

11. In spite of its stated goal, there is no guarantee that the project's revenues will be reinvested for the benefit of local communities to meet their basic needs and uphold their economic rights. In the past few years, both the World Bank and the International Monetary Fund have expressed serious reservations about the effective political will of the two Governments to alleviate poverty, on the final destination and use of public funds in Chad, and on the transparency of financial operations in Cameroon. The substantial increase of the foreign debt burden of the two countries that can ensue from the need to repay World Bank loans will also have a detrimental impact on poorer classes.

12. The oil extraction project would be carried out in the Doba region, an area that has been characterized by civil tensions and strife, which peaked in a 20-year-long civil war between Muslim populations of the north and animist and Christian populations living in the south. In spite of the peace agreement signed between the Government and the rebel army (FARF) in April 1997, the political climate is still very uncertain and the risks of another civil war remain high. Much of the tension may derive from the redistribution of the oil revenues: the Government would earn between US$ 3.5 and 8 billion in 20 years and the FARF asks for a 50 per cent share of these profits. The government forces have launched an all-out effort to "pacify" the region. Since October 1997 serious human rights violations have been reported which culminated in the massacre of 100 unarmed civilians in the Logone region, as well as executions and arbitrary arrests by the government army as denounced by eminent local and international human rights groups.

13. Particularly serious is the situation of Ngarledjy Yorongar, a member of Parliament, whose immunity has been lifted and who has been arrested and is now being tried for having expressed strong opposition to the project and having denounced the corruption of some key members of Government by the oil company Elf. The European Parliament adopted an urgent resolution in June 1998 calling for the immediate release of Yorongar, the respect for human rights and the rule of law in southern Chad, and for the rights of local communities to information and participation to be guaranteed. The resolution also calls for the protection of indigenous peoples and for the suspension of the project until further guarantees come from the World Bank assessment.

14. In view of the above, we ask the expert charged with the question of the relationship between the enjoyment of human rights and the working methods and activities of transnational corporations to launch an investigation into the Chad-Cameroon oil and pipeline project, with the collaboration of local and international environmental and human rights NGOs, in order to:

(a) Carry out an independent evaluation of the environmental and social impacts in all the oil extraction areas planned as parts of the consortium project;

(b) Assess the effective implementation of the International Covenant on Economic, Social and Cultural Rights;

(c) Monitor the effective application of international standards of protection, including the World Bank guidelines and directives on Involuntary Resettlement (O.D. 4.30), Indigenous Peoples (O.D. 4.20), Environmental Assessments (O.D. 4.01), Natural Habitats (O.P. 4.04), Policy on Disclosure of Information (O.P. 17.50) and Economic Evaluation of Investment Operations (O.P. 10.04);

(d) Assess the compliance of the agreements signed between the oil consortium and the Chad and Cameroon Governments (i.e. Convention of Establishment) with international and national standards and legislation for the protection of the environment, human rights and peoples' rights.

15. We welcome Sub-Commission resolution 1996/39 inviting the Commission on Human Rights to set up a working group on transnational corporations and we hope that it can consider the Chad-Cameroon oil and pipeline project as a case study of the violations of economic, social and cultural rights of local populations caused by transnational corporations and multilateral development banks. We also hope that the work of such a group can foster a debate on the adoption of international codes of conduct for TNCs and the establishment of independent monitoring bodies.